



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2004

Ms. Deena Wallace  
Associate General Counsel  
Texas A&M University System  
200 Technology Way, Suite 2079  
College Station, Texas 77845-3424

OR2004-5378

Dear Ms. Wallace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204460.

Texas A&M University—Corpus Christi (the “university”) received a request for information relating to a specified request for proposals. The university takes no position with regard to the public availability of the requested information. You believe, however, that this request for information implicates the proprietary interests of KMC Telecom (“KMC”) and Time-Warner Cable (“Time-Warner”). You notified KMC and Time Warner of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> You also submitted the requested information, which we have reviewed.

An interested third party is allowed ten business days from the date of its receipt of the governmental body’s notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov’t Code* § 552.305(d)(2)(B). As of the date of this decision, we have received no correspondence from either KMC or Time-Warner. Therefore, neither KMC nor Time-Warner has demonstrated that any of the submitted information is proprietary for purposes of section 552.110 of the Government Code. *See Gov’t Code* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

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<sup>1</sup>*See Gov’t Code* § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov’t Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

We note, however, that the documents relating to KMC contain account numbers. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked account number information that the university must withhold under section 552.136.

In summary: (1) the university must withhold the marked information under section 552.136 of the Government Code; and (2) the rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large, stylized flourish extending from the end of the signature.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 204460

Enc: Submitted documents

c: Ms. Yolanda Arevalo  
Southwestern Bell Telephone, L.P.  
406 North Carancahua Street 351  
Corpus Christi, Texas 78401  
(w/o enclosures)

Mr. Frank Wood  
KMC Telecom  
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Ms. Vicki Triplett  
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